

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ANDRE WELLS,)	CASE NO. 1:05 CV 2119
)	
Petitioner,)	JUDGE JAMES S. GWIN
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
MARC C. HOUK,)	<u>AND ORDER</u>
)	
Respondent.)	

On September 2, 2005, petitioner pro se Andre Wells filed the above-captioned habeas corpus action. The petition asserts that petitioner is entitled to release from his incarceration in an Ohio penal institution because his sentence has expired. For the reasons stated below, the petition is denied and this action is dismissed.

A federal district court may entertain a petition for a writ of habeas corpus by a person in state custody only on the ground that the custody violates the Constitution or laws of the United States. Furthermore, the petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254.

There is no indication on the face of the petition that petitioner has sought relief via an action for habeas corpus and/or mandamus in the Ohio courts. Given that he raises issues which

might conceivably be resolved by the state courts, petitioner has not yet exhausted these available state remedies. Cf. Brewer v. Dahlberg, 942 F.2d 328, 336-37 (6th Cir. 1991) (petitioner required to seek writ of habeas corpus under Ohio law where he alleged parole revocation occurred after sentence expired).

Accordingly, this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed.R.App.P. 22(b).

IT IS SO ORDERED.

Dated: October 19, 2005

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE